IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/12/2002

CORAM

The Hon'ble Mr.Justice N.V.BALASUBRAMANIAN
AND
The Hon'ble Mr.Justice K.RAVIRAJA PANDIAN

Tax Case No. 170 of 1999 and Tax case No. 171 of 1999

The Commissioner of Income Tax,
Tamil Nadu. .. Applicant

-Vs-

Coromandel Indag Products P.Ltd.,
Madras. .. Respondent

These tax cases are filed under Section 256(1) of the Income Tax Act, 1961 as against the order dated 23.09.1993 passed in ITA Nos.150 & 151/Mds/89 on the file of the Income Tax Appellate Tribunal.

In both cases:

!For Applicant : M/s. Pushya Sitaraman.
Sr.Standing Counsel (I.T.)

^For Respondent : Mr.P.P.S.Janardhana Raja.

:J U D G M E N T

N.V.BALASUBRAMANIAN,J.

The assessee is a private limited company. The assessment year involved is 1983-84 and the relevant previous year ended on 30.6.1982. In this reference, the question of validity of levy of penalty under sections 271(1)(c) and 273(2)(a) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') is the subject matter of consideration.

2. The assessing officer levied penalty under section 271(1)(c) as well as under section 273(2)(a) of the Act on the ground that the assessee has made a false claim for deduction of certain amounts under section 35(1)(iv) of the Act. Section 35 deals with the expenditure on scientific research, and section 35(1)(iv) of the Act deals with the grant of deduction of any expenditure of a capital nature on scientific research relating to the business carried on by the assessee and the deduction to be granted is regulated by the provisions of subsection (2) of section 35 of the Act. Under section 35(2)(ia) of the Act, where the assessee has incurred capital expenditure after 31.3.1 967, the whole of such capital expenditure incurred

in any previous year shall be deducted for that previous year and the proviso regulates the grant of deduction for the expenditure on the acquisition of any land incurred after 29.2.1984 with which we are not concerned. We are also not concerned with the Explanation-2 to section 35(2)(ia) of the Act as the said Explanation was introduced only from 1.4.1984.

3. The assessee claimed certain deductions by way of capital expenditure for the purchase of properties, one at Chennai and another at Gujarat. In so far as Chennai property is concerned, the assessee claimed a sum of Rs.59,88,893/- to be allowed as deduction under section 35(1)(iv) of the Act. The assessing officer, during the course of assessment proceedings, found that the deed of sale for Chennai property was registered only on 26.6.1982 which was four days prior to the closing of the accounting period, viz., 30.6.1982. The assessing officer also found that the assessee had paid only a sum of Rs.12.60,00 0/- towards sale consideration for the purchase of the property during the relevant previous year and other instalments have been paid by the assessee beyond the previous year. The assessing officer also found that apart from the purchase price, the assessee claimed a sum of Rs.2,63,308/- being the interest payable on such instalments of purchase consideration. The assessing officer also found that the sale deed also showed that a part of the building was meant for administrative purpose and no portion was used for research purposes and it was admitted by the assessee's representative at the time of finalisation of assessment proceedings that even the portion purchased which was meant for scientific research purposes was not really put to use for that purpose. The assessing officer also found that in four days available, the property could not have been modified for the purpose of scientific research project and he rejected the claim of deduction for scientific research purposes amounting to Rs.59,88,893/- on the ground that the expenditure did not qualify for deduction.

4. In so far as Gujarat property is concerned, the assessee claimed a sum of Rs.42,67,054/- being the total purchase consideration for 100 acres of land from various farmers of Amrutpura village in Gujarat State. The assessing officer found that the assessee had merely entered into a memorandum of understanding with another company and the said company agreed to procure the land in the form of sale agreements from the respective farmers. It was also stipulated in the said agreement that the sale agreement with the farmers would be registered in the form of sale deed in favour of the assessee company on or before 30.6.1982. It was found that the agreements with the farmers could not be registered before 30.6.1982. It was found that an expenditure of a sum of Rs.6,75,000/- was said to have been incurred by the assessee for the development work carried on by the other company. It was found that the actual registration took place only on 23.3.1984 , but it was claimed that the possession was taken. The assessing officer found that as per the memorandum of understanding, the land was procured not only for scientific research purposes, but also for putting up of manufacturing facilities and the assessee did not produce any proof for scientific research that was alleged to have been carried on. Hence, he rejected the claim of deduction towards scientific research expenditure of a sum of Rs.42,67,054/-.

5. In so far as assessment proceedings are concerned, the Commissioner of Income-tax (Appeals) upheld the order of the assessing officer in not granting deduction under section 35(1)(iv) of the Act, The Income-tax Appellate Tribunal, in the appeal preferred by the assessee against the order

of assessment, also held that the assessee has not established that the assets were maintained for scientific research purposes. The Appellate Tribunal also found that the mere intention of the assessee to carry on scientific research would not be sufficient to treat the property as the provision to facilitate research. The Appellate Tribunal also observed that if there was already a laboratory in existence, the purchase of any asset for utilisation in that laboratory would fulfil the criterion, even if such purchase was at the end of the year as an asset intended for scientific research, but where no such laboratory was in existence and the land was just purchased, the intention to set up the laboratory was not sufficient to hold that the amount spent was eligible for deduction as the intention may not be effectuated.

6. As far as the Gujarat property is concerned, the Appellate Tribunal was of the view that it would be quite possible to hold that there was an oral agency agreement as prior negotiation for the purchase of the land was not disputed and the statement made in the letter dated 29.6.1982 could not be rejected as false. The Appellate Tribunal also found that there was no registered sale deed executed in the previous year to accept the actual acquisition of the property by the assessee. The Appellate Tribunal also held that it was not open to the assessee to claim deduction on the basis of possession and part performance of the agreement. The Appellate Tribunal further held that the mere intention to set up a research unit was not sufficient and the claim has to be regarded as pre-mature, and rejected the claim of the assessee. It is stated that the order of the Appellate Tribunal upholding the disallowance of deduction claimed by the assessee has become final.

7. The assessing officer, while completing the assessment proceedings, also initiated the penalty proceedings under section 271(1)(c) as well as 273(2)(a) of the Act. After giving an opportunity to the assessee and after hearing the assessee, the assessing officer passed two orders one under section 271(1)(c) of the Act levying minimum penalty under that section and also levied penalty under section 273(2)(a) of the Act.

8. In so far as Chennai property is concerned, the assessing officer found that there was absolutely no evidence to show that the building was used for scientific research purposes and there was no evidence to show that the building was fit to be used for the research purposes. He also found that under the sale deed a part of the property purchased was meant for administrative purpose, but the assessee claimed the entire purchase price as if the entire building was put into use for scientific research purposes. The assessing officer also found that even the portion purchased for scientific research purpose was not put to use for the said purpose and the assessee knew very well that the building was not put to use for scientific purposes. He also found that the expenditure actually incurred was only a sum of Rs.12,60,000/-, but the assessee claimed the entire amount of Rs.59,88,8 93/- along with interest on deferred payments. On the above facts, the assessing officer came to the conclusion that the assessee deliberately and fraudulently furnished false particulars and attempted to defraud the department by making false claim that there was a scientific research as there was absolutely no proof for that.

9. As far as Gujarat property is concerned, the assessing officer found that the assessee did not become the owner of the land and did not even spend any money, but claimed a sum of Rs.42,67,054/- as capital

expenditure for scientific research purposes. He held that there was no agreement with the owners of the land for the purchase of the property and no advance was paid and on the basis of the unregistered and undated agreement with the middleman agreeing to procure the land, the assessee claimed the deduction. He therefore held that the claim of the assessee was false. He also found that the agreement with the middleman showed that the land was to be used for industrial activities and manufacturing facilities and only a sum of Rs.6,75,000/- was paid to the middleman for levelling purpose, but the assessee claimed that amount also as scientific research expenditure. He therefore held that the assessee has furnished false particulars and accordingly, levied penalty under section 271(1)(c) of the Act.

10. In the order passed under section 273(2)(a) of the Act, the assessing officer found that the assessee filed an estimate showing nil tax payable, whereas the assessee's total income was a positive figure exceeding a sum of Rs.1.9 crores. He held that the claim of the assessee for deduction of capital expenditure was a false claim and the assessee knew very well of the same while filing the 'nil' estimate. He therefore held that penalty for filing such an estimate was exigible and accordingly, levied penalty under section 273(2)(a) of the Act also. 11. The assessee carried the matter before the Commissioner of Income-tax (Appeals) challenging the orders of penalty. The Commissioner of Income-tax (Appeals) confirmed the orders of penalty. The assessee carried the matter in further appeal before the Appellate Tribunal. The Appellate Tribunal held that the assessee had material honestly, though erroneously, to believe that it could make a legitimate claim of deduction in respect of the purchase of assets intended for scientific research unit to be set up in the near future. According to the Appellate Tribunal, the claim was only a debatable issue and was not a false claim and following the decision of the Calcutta High Court in BURMAH-SHELL OIL STORAGE AND DISTRIBUTING CO. OF INDIA LTD. Vs. ITO (112 ITR 592), it held that a legal contention bona fide was raised by the assessee and whether it was ultimately accepted or rejected would not tantamount to an act of fraud or gross or wilful negligence and the assessee cannot be deemed to have concealed the particulars of income within the meaning of Section 271(1)(c) of the Act. The Tribunal also cancelled the penalty levied under Section 2 73(2)(a) of the Act on the basis that the assessee could not have anticipated the rejection of the bona fide claim so as to attract the liability to file an enhanced estimate of income. In this view of the matter, the Tribunal cancelled the penalty under Section 273(2)(a) of the Act.

12. At the instance of the Revenue, the Appellate Tribunal has stated a case and referred the following questions of law for our consideration under section 256(1) of the Act:-

1.Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in cancelling the penalty levied under Section 271(1)(c) of the Act ?

2.Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in cancelling the penalty levied under Section 273(2)(a) of the Act ?

13. Mrs.Pushya Sitharaman, learned Senior Standing Counsel for the

Revenue submitted that the Tribunal was not correct in holding that the assessee had not made a false case. According to her, the facts clearly establish that the assessee had claimed deduction under Section 35(1)(iv) of the Act knowing fully well that it was a false claim and none of the conditions prescribed in section 35(1)(iv) of the Act was fulfilled. She referred to the order of the Tribunal for the assessment under appeal wherein the Tribunal found that no laboratory was in existence as the land was purchased just four days before the close of the relevant previous year and the intention of the assessee to set up the laboratory would not be sufficient to hold that the claim was eligible for deduction and further, the intention was not effectuated. She further submitted that there is absolutely no material to establish the intention on the part of the assessee. She therefore submitted that the claim for deduction under Section 35(1)(iv) of the Act was a false claim. Learned senior standing counsel submitted that the penalty under Section 273(2)(a) of the Act is attracted as the assessee filed an estimate knowing fully well that it was an untrue estimate and the assessee had not even purchased the property at the time of the last date of filing of the estimate of advance tax and the property was purchased subsequently, just four days prior to the end of the previous year. So far as the Gujarat property is concerned she submitted that the assessee has not even purchased the property before the end of the previous year and the assessee has filed a false and untrue estimate of advance tax.

14. Mr.P.P.S.Janardhana Raja, learned counsel appearing for the assessee on the other hand submitted that the Tribunal has found that the claim of the assessee was pre-mature and after taking note of the purchase of the property at Chetpet, Chennai and the agreement entered into by the assessee, the Tribunal has come to the conclusion that the assessee had material honestly, though erroneously, to believe that it could legitimately claim deduction in respect of the purchase of assets intended for scientific research even though such research units were to be set up only in the future. The learned counsel therefore submitted that the Tribunal found that the claim of the assessee was not a false claim but only a pre-mature claim. According to him, the assessee had not committed any act of fraud or gross negligence in making the claim under Section 35(1)(iv) of the Act. The learned counsel therefore submitted that the Tribunal has found on facts that there was no case for the levy of penalty and this Court may not interfere with the finding of fact. Learned counsel also submitted that the penalty levied under Section 271(1)(c) of the Act was not proper and in support of his submission he relied upon the following decisions: (1) BURMAH-SHELL OIL STORAGE AND DISTRIBUTING CO. OF INDIA LTD. Vs. I.T.O. (112 I.T.R. 592), (2) BADAL RAM LAXMI NARAIN Vs. C.I.T. (191 I.T.R. 296); (3) C.I.T. Vs. CELLULOSE PRODUCTS OF INDIA LTD. (192 I.T.R. 155); and (4) C.I.T. Vs. INDIAN METALS & FERRO ALLOYS LTD. (211 I.T.R. 35).

15. We have carefully considered the submissions of the learned counsel for the Revenue and the learned counsel for the assessee. We find that the Income Tax Officer while levying the penalty under Section 271(1)(c) as well as under Section 273(2)(a) of the Act, has found that in so far as the claim for expenditure on Chennai property is concerned, the assessee claimed the expenditure of purchase of the said property, but the said property was purchased four days prior to the close of the previous year and the assessee

had claimed that it was put to use for scientific research, but actually it was not done so. The Income Tax Officer found that there was no proof at all that the building was put to use for any scientific research. He also found that the sale deed showed a part of the property was purchased for the administrative purpose, and the assessee claimed the entire purchase consideration as if the entire property was put to use for the purpose of scientific research. He found that no portion of the property was used for the purpose of scientific research. He also found that the expenditure incurred during the previous year was only Rs.12,60 ,000/-, but the assessee claimed full amount of Rs.59,88,893/- and also interest for the deferred payments amounting to Rs.2,63,308/- and on the above basis, he found that the assessee has deliberately made false a claim.

16. As far as the property at Gujarat is concerned, the assessee was not even the owner of the property at the end of the previous year, but the assessee claimed a deduction of Rs.42,67,054/- as capital expenditure for scientific research. He found that there was not even an agreement with the erstwhile owners of the property and the assessee had not produced any proof of evidence for the use of the property for scientific research. He also found that there was only an agreement entered into with the middleman to procure the land from the owners. He further found that a sum of Rs.6,75,000/- was paid for levelling the land, and the assessee claimed a sum of Rs.42,67,054/- as expenditure incurred on scientific research. Under these circumstances, the assessing officer held that the assessee had furnished false particulars and the assessee made a false claim as if the expenditure was incurred for scientific research, without there being no proof at all even for the intention for the said use. The Commissioner of Income Tax Appeals also confirmed the findings of the Assessing Officer. He also found that the claim made by the assessee was false claim and it was found to be false as the property was not put to use for scientific research, but was used as a tennis court and for administrative purpose. He therefore held that so far as the claim regarding Chennai property is concerned, the explanation of the assessee was false and unsubstantiated. He also found that with reference to the Gujarat property the assessee had not even produced the sale agreement entered into between the assessee and the owners and there was only an agreement entered into with a middleman to procure the land for the assessee from the owners and there is no evidence to show that the assessee had acquired the land. He also found that subsequently the land was not put to use for scientific research purposes. In this view he confirmed the order regarding the levy of penalty.

17. We hold that the Appellate Tribunal, without examining the materials, merely held that the claim of the assessee was pre-mature. The Tribunal also noticed in its order passed in the assessment appeal that mere intention to set up a research laboratory would not be sufficient to hold that the assessee would be entitled to the claim. However, in the penalty appeal the Tribunal held that the assessee had material honestly, though erroneously, to believe that it could legitimately claim deduction in respect of the purchase of assets intended for scientific research even though such research units were to be set up only in the future. We are of the view that the above observation of the Appellate Tribunal is quite contrary to its own finding. It was found by the assessing officer as well as by the Commissioner of Income Tax (Appeals) that the assessee has not even produced any material to show

that it had intention to purchase the property for scientific research. In so far as the property that was purchased at Chennai is concerned the purchase was just four days prior to the end of the previous year and it was found that the assessee has paid only Rs.12,60,000/-, but claimed the entire amount of Rs.59,88,893/- and also claimed interest of a sum of Rs.2,63,308/-. It was also found that the assessee had not used the building for any scientific research and even at the time of purchase the sale deed showed that part of it was used only for administrative purpose, but the assessee claimed the entire expenditure as scientific research expenditure.

18. As far as the Gujarat property is concerned, the assessee has not even produced any agreement. There is no evidence to show that there was any oral agreement in this regard. The only evidence that was produced was for the payment of Rs.6,75,000/- and that amount was paid for levelling the land. The Tribunal proceeded on the basis that it was possible that there was an oral agreement in respect of the land. The assessee has not let in any evidence regarding the oral agreement or the terms of such oral agreement before the assessing officer or before the Commissioner of Income-tax (Appeals) or even before the Appellate Tribunal, but the Tribunal drew its own imagination and held that probably there was an oral agreement for the purchase of the property at Gujarat. The assessee claimed a sum of Rs.42,66,054/- as if the assessee had incurred expenditure for scientific research. The Assessing Officer has found that there was absolutely no evidence for the entering into an agreement for the purchase of the land at Gujarat. The assessee had produced only an undated agreement entered into with a middle man, who agreed to purchase the land from some Adhivasies. The Appellate Tribunal has overlooked all the materials and without considering the orders of the assessing officer and the Commissioner of Income-tax (Appeals), cancelled the penalty only on the ground that the claim of the assessee was pre-mature. We are of the view that the assessee has not produced any material before the Appellate Tribunal and substantiated its explanation. We hold that the Appellate Tribunal was not correct in holding that the claim of the assessee was not a false claim.

19. As far as the decision of the Calcutta High Court in BURMAHSHELL OIL STORAGE AND DISTRIBUTING CO. OF INDIA LTD. Vs. I.T.O. (112 I.T.R. 592) is concerned, it has been held that merely because the contention raised by the assessee was ultimately turned down, it cannot be said that the said contention could be characterised as frivolous, dishonest or mala fide. On the other hand it was found by the assessing officer in the penalty proceedings that the claim of the assessee was false and therefore, the decision of the Calcutta High Court referred to above is not applicable to the case on hand.

20. As far as the decisions of the Supreme Court in BADAL RAM LAXMI NARAIN Vs. C.I.T. (191 I.T.R. 296) and C.I.T. Vs. CELLULOSE PRODUCTS OF INDIA LTD. (192 I.T.R. 155) are concerned, it is axiomatic that the High Court should not interfere with the Tribunal's finding of fact even if another view is possible. The Supreme Court has also held that the High Court hearing a reference under the Income-Tax Act does not exercise the appellate or revisional or supervisory jurisdiction over the Appellate Tribunal and that it acts in a purely advisory capacity. We are of the view that if the Tribunal, after considering the evidence produced before it on a question of fact, records a finding, this Court will not interfere such a

finding unless the said finding is not supported by any evidence or perverse or patently unreasonable. In our view, the finding of the Tribunal in the penalty appeal is not based on any evidence and it is perverse and it is patently erroneous and unreasonable as it has overlooked the materials produced before the Assessing Officer and in the absence of any material, the Appellate Tribunal has come to an erroneous conclusion. Hence, both the decisions referred to above do not support the case of the assessee.

21. As far as the decision reported in C.I.T. Vs. INDIAN METALS & FERRO ALLOYS LTD. (211 I.T.R. 35) is concerned, the Orissa High Court held that the finding of fact arrived at by the Tribunal will not be disturbed unless it is based on no material or is perverse or is based on irrelevant, extraneous or inadmissible considerations or is arrived at by the application of wrong principles of law. We hold that the above decision also does not support the case of the assessee as the Tribunal has arrived at the finding without any material on record as the order of the assessing officer shows that the assessee had made a false claim. The assessee has also not produced any evidence to show that it has intended to use the property for scientific and research purposes. The available evidence clearly shows that the sale deed produced by the assessee for the purchase of the Chennai property that part of the property was meant for administrative purpose, yet the assessee claimed not only the entire amount paid but also the future amount payable and the interest also as if the assessee had incurred the expenditure towards scientific research. As far as the Gujarat property is concerned, there is absolutely no evidence at all even for the agreement of sale and there was an agreement entered into with a middleman to procure the land for the assessee from some Adivasies. It was also found that the assessee had not put the land for scientific research. The Tribunal has completely overlooked all the materials and held that the claim was only pre-mature. We hold that the Tribunal was not correct in holding that the claim of the assessee is not false, and the assessee has not deliberately furnished inaccurate particulars. Therefore, we hold that the conclusion arrived at by the Appellate Tribunal in cancelling the penalty under Section 271(1)(c) of the Act is not correct. Accordingly, we hold that the cancellation of penalty under Section 271(1)(c) is not sustainable in law. For the same reasons, the order of the Appellate Tribunal cancelling the penalty levied under section 273(2)(a) of the Act is also not sustainable.
22. Accordingly, the questions referred to us are answered in the negative, in favour of the revenue and against the assessee. However, under the circumstances of the case, there will be no order as to costs.

Index-Yes.
Internet-Yes.
Sk/na

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090 (Five Copies with records)

2.The Secretary,
Central Board of Direct Taxes,
New Delhi (Three copies)

3.The Commissioner of Income-Tax,
Tamil Nadu-I,
Madras.

4.The Commissioner of Income-Tax
(Appeal-V), Madras-34.

5.The Inspecting Assistant Commissioner
of Income-Tax,
(Assessment) Range-I,
Madras-34.